

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JEROME DAVIS,

Plaintiff,

VS.

**LANCASTER COUNTY OF
CORRECTIONS, et al.,**

Defendants.

CASE NO. 8:05CV3238

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Jerome Davis's Appeal from Magistrate Judge's Order. (Filing No. 131). Mr. Davis appeals Magistrate Judge Gossett's May 15, 2006, Order (Filing No. 125), which denied Mr. Davis's Motion for Appointment of Counsel (Filing No. 108). Neither party submitted briefs on this matter. For the reasons stated below, Mr. Davis's appeal will be denied.

STANDARD OF REVIEW

In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NELR 72.2(c); *United States v. Apker*, 139 F.R.D. 129, 131 (D. Neb. 1991). "Clearly erroneous is a high standard to meet; the challenger must convince the reviewing court that a mistake has been made." *Smith v. BMI, Inc.*, 957 F.2d 462, 463 (7th Cir. 1992).

DISCUSSION

The Court has reviewed Judge Gossett's May 15, 2006, Order (Filing No. 125), and the Court finds the Order is neither clearly erroneous nor contrary to law. Trial courts have broad discretion in determining whether the plaintiff and the court will benefit from the appointment of counsel. *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996). In making this

determination, trial courts are instructed to take into account “the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff’s ability to investigate the facts and present his claim.” *Id.* Judge Gossett determined that appointment of counsel in this case was unnecessary because Mr. Davis “has capably presented the factual basis for the claims in this proceeding.” (Filing No. 125). This decision is not clearly erroneous nor contrary to law.

IT IS ORDERED:

Plaintiff Jerome Davis’s Appeal from Magistrate Judge’s Order (Filing No. 131)
is denied.

DATED this 27th day of June, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge